

PUBLIC MATTER

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STATE BAR COURT
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STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

JOHN REFAAT HABASHY,
No. 236708,

A Member of the State Bar.

) Case Nos. 11-O-18357, 12-O-10962,
) 12-O-14399

) NOTICE OF DISCIPLINARY CHARGES
)
)
)

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. John Refaat Habashy ("Respondent") was admitted to the practice of law in the State
4 of California on June 7, 2005, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 11-O-18357
8 Business and Professions Code, section 6106.3(a)
[Violation of California Civil Code, section 2944.7(a)]

9 2. Respondent willfully violated Business and Professions Code, section 6106.3, by
10 negotiating, arranging or otherwise offering to perform a mortgage loan modification for a fee
11 paid by the borrower, and demanding, charging, collecting or receiving such fee prior to fully
12 performing each and every service Respondent had contracted to perform or represented that he
13 would perform, in violation of Section 2944.7(a)(1) of the Civil Code, as follows:

14 3. On or about September 11, 2010, Jose Roman ("Roman") hired Respondent to
15 represent him in a residential mortgage loan modification on real property Roman owned in
16 California.

17 4. On or about September 16, 2010 and October 27, 2010, Roman paid Respondent
18 \$750.00 respectively, for a total of \$1,500.00, in advanced fees. At time he collected the
19 advanced fees, Respondent had not completed all of the loan modification services Roman hired
20 Respondent to perform.

21 5. By negotiating, arranging or offering to perform a mortgage loan modification for a
22 fee paid by a borrower, and demanding, charging, collecting and receiving at least \$1,500.00
23 from Roman prior to fully performing each and every service he had contracted to perform or
24 represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the
25 Civil Code, Respondent willfully violated Business and Professions Code section 6106.3.

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1 COUNT TWO

2 Case No. 12-O-10962
3 Rules of Professional Conduct, rule 3-700(D)(2)
4 [Failure to Refund Unearned Fees]

5 6. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
6 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

7 7. On or about July 11, 2011, Maria Arellanez ("Arellanez") hired Respondent's firm,
8 Loan Debt Solutions ("LDS"), to represent her in defending against a potential unlawful detainer
9 action to take possession of her home in South Gate, California.

10 8. On or about July 11, 2011, Arellanez's cousin, Salvador Rojas ("Salvador") issued a
11 cashier's check on Arellanez's behalf for \$1,149.00 to pay for Respondent's legal services.

12 9. On or about August 1, 2011, Salvador authorized \$1,250.00 to be charged on his
13 credit card by LDS to pay for Respondent's legal services to Arellanez. In total, Salvador paid
14 Respondent a total of \$2,399.00 for Respondent's services on Arellanez's behalf.

15 10. Thereafter, no unlawful detainer action was ever filed by Arellanez's lender against
16 her to take possession of the South Gate home.

17 11. On or about August 17, 2011, Salvador's daughter, Elizabeth Rojas ("Elizabeth")
18 informed a LDS employee by phone that the lender had rescinded the foreclosure. The rescinded
19 foreclosure was not due to any of Respondent's efforts and accordingly, Elizabeth requested that
20 Respondent temporarily suspend his legal services on Arellanez's behalf.

21 12. In or about September 2011, Elizabeth confirmed with the LDS employee by phone
22 that the foreclosure had been rescinded and requested a refund of the advanced fees paid on
23 Arellanez's behalf. The employee denied the request for the refund, despite Respondent not
24 having earned the fees or providing legal services of value.

25 13. On or about October 12, 2011, William Cort, an attorney hired by Salvador, Elizabeth
26 and Arellanez, sent a letter to Respondent requesting a refund of the \$2,399.00 in unearned fees.
27 Respondent received the October 12, 2011 letter, but denied the request for the refund.

28 14. On or about February 1, 2012, Salvador filed a State Bar complaint against
Respondent.

1 15. On or about June 19, 2012, Respondent refunded the full \$2,399.00 in unearned fees
2 to Arrellanez.

3 16. By failing to provide a full refund of the \$2,399.00 in unearned fees until on or about
4 June 19, 2012, Respondent failed to promptly refund a part of a fee that has not been earned in
5 willful violation of rule 3-700(D)(2), Rules of Professional Conduct.

6 COUNT THREE

7 Case No. 12-O-10962
8 Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

9 17. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
10 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
11 possession, as follows:

12 18. The factual allegations of Count Two are incorporated herein by reference.

13 19. At the time Respondent received the October 12, 2011 letter and denied the request
14 for the refund, Respondent failed to provide an accounting to Arrellanez of the services rendered.

15 20. By failing to provide an accounting to Arrellanez of the services rendered on her
16 behalf, Respondent failed to render appropriate accounts to a client regarding all funds coming
17 into Respondent's possession in willful violation of rule 4-100(B)(3), Rules of Professional
18 Conduct.

19 COUNT FOUR

20 Case No. 12-O-14399
21 Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

22 21. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by
23 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
24 follows:

25 22. On or about June 7, 2011, Salvador Romo ("Romo") and his wife, Maria, hired
26 Respondent's firm, LDS, to file a bankruptcy petition on their behalf to protect their assets.

27 23. According to the retainer agreement, Romo was to pay LDS a total of \$2,497.00,
28 including \$1,800.00 for attorney fees and \$697.00 for advanced filing fees.

1 24. On or about June 7, 2011, Romo paid an initial deposit to LDS with a \$1,250.00
2 check.

3 25. On or about June 30, 2011, LDS debited approximately \$1,247.00 from Romo's bank
4 account for the remaining advanced fees as per the retainer agreement.

5 26. Between in or about June 2011 and January 2012, LDS employees requested
6 information from the Romos to file a bankruptcy petition.

7 27. In or about January 2012, Romo received a phone call from LDS informing him that
8 his bankruptcy petition was ready to be filed.

9 28. On or about February 21, 2012, Respondent had a phone conversation with Romo and
10 for the first time informed him that a bankruptcy petition would be ineffective and inappropriate
11 for the Romos to protect their assets.

12 29. Thereafter, Respondent failed to file a bankruptcy petition on behalf of the Romos,
13 provide legal services of value or earn the advanced fees.

14 30. On or about April 3, 2012, Romo terminated Respondent's services by phone and
15 requested a full refund of the unearned fees from LDS.

16 31. By accepting the Romos as client and agreeing to file a bankruptcy petition on their
17 behalf, subsequently not filing a bankruptcy petition on their behalf and not advising them that a
18 bankruptcy petition was not a viable option to protect their assets until on or about February 17,
19 2012, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with
20 competence in willful violation of rule 3-110(A), Rules of Professional Conduct.

21 COUNT FIVE

22 Case No. 12-O-14399

23 Rules of Professional Conduct, rule 3-700(D)(2)
24 [Failure to Refund Unearned Fees]

25 32. Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
26 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

27 33. The factual allegations of Count Four are incorporated herein by reference.
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1 34. On or about April 3, 2012, when Romo terminated Respondent's services by phone,
2 he requested a full refund of \$2,497.00 in unearned fees and filing fees from LDS. An LDS
3 employee agreed to send Romo a full refund.

4 35. A few weeks later, having yet to receive a refund, Romo called LDS by phone
5 regarding the status of his refund and was informed the refund was under consideration.

6 36. On or about May 13, 2012, Romo called LDS by phone and was informed that a full
7 refund was out of the question and would be contacted by the billing department.

8 37. On or about May 17, 2012, having yet to receive a refund, Romo called LDS by
9 phone and requested an update regarding the status of his refund. An LDS employee informed
10 Romo that the retainer was non-refundable and that Romo would only be entitled to \$700.00 in
11 two payments.

12 38. On or about May 29, 2012, Romo filed a State Bar complaint against Respondent.

13 39. On or about June 21, 2012, Respondent sent Romo a full refund of \$2,497.00 in
14 unearned fees and filing fees.

15 40. By failing to provide a full refund of the \$2,497.00 in unearned fees and filing fees
16 until on or about June 21, 2012, Respondent failed to promptly refund a part of a fee that has not
17 been earned in willful violation of rule 3-700(D)(2), Rules of Professional Conduct.

18 COUNT SIX

19 Case No. 12-O-14399
20 Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

21 41. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3), by
22 failing to render appropriate accounts to a client regarding all funds coming into Respondent's
23 possession, as follows:

24 42. The factual allegations of Counts Four and Five are incorporated herein by reference.

25 43. On or about May 17, 2012, when Romo was informed by LDS that the retainer was
26 non-refundable and that Romo would only be entitled to \$700.00 in two payments, Respondent
27 failed to provide an accounting to Romo of the services rendered.
28

1 44. By failing to provide an accounting to Romo of the services rendered on his behalf,
2 Respondent failed to render appropriate accounts to a client regarding all funds coming into
3 Respondent's possession in willful violation of rule 4-100(B)(3), Rules of Professional Conduct.

4 COUNT SEVEN

5 Case No. 12-O-14399
6 Rules of Professional Conduct, rule 4-100(B)(4)
[Failure to Pay Client Funds Promptly]

7 45. Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(4), by
8 failing to pay promptly, as requested by a client, any funds in Respondent's possession which the
9 client is entitled to receive, as follows:

10 46. The factual allegations of Counts Four through Six are incorporated herein by
11 reference.

12 47. On or about April 3, 2012, Romo requested a full refund of \$2,497.00 in unearned
13 fees from LDS, including \$697.00 in filing fees which were not used to file a bankruptcy petition
14 on Romo's behalf.

15 48. On or about June 21, 2012, Respondent sent Romo a full refund of \$2,497.00 in
16 unearned fees and filing fees.

17 49. By failing to promptly pay Romo \$697.00 in filing fees which were not used to file a
18 bankruptcy petition on Romo's behalf, Respondent, failed to pay promptly, as requested by a
19 client, any funds in Respondent's possession which the client is entitled to receive in willful
20 violation of rule 4-100(B)(4), Rules of Professional Conduct.

21 COUNT EIGHT

22 Case No. 12-O-14399
23 Business and Professions Code, section 6090.5(a)(2)
[Seeking an Agreement to Withdraw a State Bar Complaint]

24 50. Respondent, while acting as a party or as an attorney for a party, wilfully violated
25 Business and Professions Code, section 6090.5(a)(2), by agreeing or seeking agreement that a
26 plaintiff would withdraw a disciplinary complaint or would not cooperate with the investigation
27 or prosecution conducted by the disciplinary agency, as follows:
28

1 51. The factual allegations of Counts Four through Seven are incorporated herein by
2 reference.

3 52. On or about June 21, 2012, when Respondent sent Romo a full refund of \$2,497.00 in
4 unearned fees, he also sent Romo a prepared letter, which stated that Romo had resolved his
5 issues with Respondent and that he did not wish to pursue any further complaint against him.
6 Along with the note and refund check, Respondent sent Romo a note asking Romo to sign the
7 letter and to fax the signed letter to Respondent.

8 53. Between on or about June 21, 2012 and on or about July 12, 2012, Respondent called
9 Romo by phone and asked him not to disclose the release statement to the State Bar that he asked
10 Romo to sign.

11 54. By sending a letter to Romo seeking for him to withdraw his State Bar complaint
12 against Respondent, Respondent acted as a party or as an attorney for a party and agreed or
13 sought agreement that a plaintiff would withdraw a disciplinary complaint or would not
14 cooperate with the investigation or prosecution conducted by the disciplinary agency in willful
15 violation of section 6090.5(a)(2), Business and Professions Code.

16
17 **NOTICE - INACTIVE ENROLLMENT!**

18 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
19 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
20 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
21 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
22 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
23 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
24 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
25 **RECOMMENDED BY THE COURT.**

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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: August 29, 2012

By: 
Anand Kumar
Deputy Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 11-O-18357; 12-O-10962; 12-O-14399

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☒

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

☐

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").

☐

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐

By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 7196 9008 9111 0443 0672

at Los Angeles, addressed to: *(see below)*

☐

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: _____ addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Paul Virgo	9909 Topanga Blvd., #282 Chatsworth, CA 91311	Electronic Address	

☐

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: August 29, 2012

SIGNED:


Sandra Reynolds
Declarant